



FOR DECISION
2016-xxxxxx

MEMORANDUM FOR THE MINISTER

ISSUE

BACKGROUND

On December 13, 2016, the Task Force (TF) on Cannabis Legalization and Regulation submitted its report to you and your colleagues, the Minister of Health and the Minister of Public Safety and Emergency Preparedness. The TF recommended that the federal government maintain criminal offences for trafficking, possession for the purposes of trafficking, possession for the purposes of export, and import/export and for illicit production. The TF did not elaborate any further on this matter other than to suggest that the government create exclusions for “social sharing”, again without further elaboration.

As you know, the *Controlled Drugs and Substances Act* (CDSA) sets out the offences and penalties in relation to all controlled substances, including cannabis.

Trafficking (s. 5) in cannabis is an indictable offence, as is being in possession of cannabis for the purpose of trafficking (PPT), unless these activities are authorized by regulations or an exemption. Trafficking means: (a) to sell, administer, give, transfer, transport, send or deliver the substance; (b) to sell an authorization to obtain the substance; or (c) to offer to do anything caught by (a) and (b);, otherwise than under the authority of the regulations. Furthermore, the term “sell” is defined as including offer for sale, expose for sale, have in possession for sale and distribute, whether or not the distribution is made for consideration. The maximum penalty is life imprisonment, unless the amount involved is 3 kg or less in which case the maximum penalty is five years, less one day. Mandatory minimum sentences for trafficking apply in certain circumstances, such as when violence is used or drugs are sold near a school.

Importing cannabis into Canada or exporting it out of Canada (s. 6) are indictable offences as is being in possession of cannabis for the purpose of exporting, unless these activities are authorized by regulations or an exemption. The offences are all indictable and punishable by a maximum of life imprisonment and with mandatory minimum penalties applying under certain circumstances.

Production (s. 7) of cannabis is an offence except as authorized by the regulations or an exemption. Production of cannabis marijuana is punishable by up to 14 years imprisonment. Production of any other cannabis product is punishable by up to life imprisonment. Various

s.21(1)(a)



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mandatory minimum punishments apply if production is for the purpose of trafficking or if the number of marijuana plants produced is more than five and the production is for the purpose of trafficking, or if the number of plants exceed 200.

All of the above offences are subject to authorizations under the regulations or an exemption under s. 56 of the *Act*.



Pages 3 to / à 6
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s.21(1)(a)



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RECOMMENDATION



PREPARED BY

Paul Saint-Denis, Senior Counsel
Criminal Law Policy Section
(613) 957-4751

Date: January 05, 2016

☐ I CONCUR.

☐ I DO NOT CONCUR.

☐ OTHER INSTRUCTIONS:

The Honourable Jody Wilson-Raybould

Date

Morasse, Eveline (PS/SP)

From: Labelle2, Diane (HC/SC)
Sent: Wednesday, October 19, 2016 2:38 PM
To: Saint-Denis, Paul; 'Joel.Kealey@justice.gc.ca'; Abramowitz, Robert (PS/SP); Piekarczywski, Anna (PS/SP); 'Dan.Moore@justice.gc.ca'; Walton, Luanne; torsten.strom@international.gc.ca
Cc: Won, Norma (HC/SC); Morales, John (HC/SC); Trepanier, Chantal (HC/SC)
Subject: [REDACTED]
Attachments: [REDACTED]

Hi All,

I am providing you with an electronic copy of a note we prepared for the Associate Deputy Minister of Justice, Nathalie Drouin,
[REDACTED]

Thank you everyone for your ongoing contributions.

Diane

Diane Labelle

General Counsel, Legal Services
Health Canada / Government of Canada
diane.labelle2@canada.ca / Tel: 613-948-7453

Avocate générale, Services juridiques
Santé Canada / Gouvernement du Canada
diane.labelle2@canada.ca / Tél: 613-948-7453

From: Wong, Leanne [<mailto:Leanne.Wong@justice.gc.ca>]
Sent: 2016-10-19 2:00 PM
To: Labelle2, Diane (HC/SC)
Cc: Curtis-Micallef, Shalene (HC/SC); Berthel, Lucie (HC/SC)
Subject: [REDACTED]

Hello Diane,

FYI, here is the electronic version of the memorandum sent to the Senior Associate DM, along with the annexes. As discussed, there were minor changes to the note (specifying Nov. 30 as the due date for the report, offering to meet in person to further discuss, removing the page numbers on the annexes and tabbing them separately).

The memo has been sent to the Senior Associate DMO.

Thank you again for your assistance on this!
Leanne

Leanne Wong
Special Advisor and Senior Counsel | Conseillère spéciale et avocate-conseil
Department of Justice Canada | Ministère de la Justice Canada
Office of the Assistant Deputy Minister | Bureau du sous-ministre adjoint

Business and Regulatory Law Portfolio | Portefeuille de droit des affaires et du droit réglementaire
275 Sparks Street | 275, rue Sparks
10th Floor | 10e étage
Ottawa, Ontario
K1A 0H8
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FOR INFORMATION

NUMERO DU DOSSIER/FILE #:2016-023348

COTE DE SÉCURITÉ/SECURITY CLASSIFICATION: Protected B

**TITRE/TITLE: Summary of the report of the Parliamentary Budget Officer entitled
“Legalized Cannabis – Fiscal Considerations” published
on November 1st, 2016**

In Spring 2017, the federal government intends to introduce legislation to legalize and regulate the cultivation, distribution, sale and consumption of recreational cannabis in Canada. The Parliamentary Budget Officer (PBO) has indicated that tax revenues (both excise and sales taxes) from the production and sales of these cannabis products will form a new income stream for the government. However, in deciding how to tax cannabis he suggests that it is imperative that the optimal after-tax price be high enough to discourage consumption by young Canadians (who are more sensitive to price) yet low enough to ensure that demand does not shift back to the illicit market.

The PBO's report provides a forecast of the economic parameters in the cannabis market, including the number of users, aggregate consumption and product prices. It also provides an overview of potential revenues that could arise from legal cannabis sales, based on existing and projected market data, as well as the government's stated policy objectives.¹

Consumption

In 2018, 4.6 million individuals over the age of 15 will use cannabis at least once, consuming an estimated 655 metric tons. By 2021, this level could rise to 5.2 million individuals over the age of 15 consuming 734 metric tons of cannabis. The vast majority of the consumption would come from 41 per cent of users who consume at least once per week or daily.

Price

In 2015-16, the average price of illicit cannabis ranged between \$8.32 and \$9.36 per gram. The 2018 pre-tax price of legal cannabis is projected at between \$6.67 and \$8.33 per gram. Due to the potential for initial supply shortages and regulatory changes, it is expected that initial prices will be higher. However, as the legal market matures, the PBO believes that there will be downward pressure on wholesale prices as producers' production costs decline. Long-term prices are less predictable as consumer tastes and product offerings, including value-added products, evolve.

Fiscal Space

At the outset of legalization, the PBO theorizes that fiscal revenues from regular retail sales taxes (HST/GST/PST) are expected to be modest – in the hundreds of millions of dollars, rather than the billions of dollars. About 60 per cent of sales tax revenues will accrue to provincial governments, and the remaining 40 per cent to the federal government. As the legal cannabis market matures, the potential to capture fiscal revenues will grow.

¹ The PBO's report does not address non-excise and sales tax related revenues (i.e. corporate income tax on licensed producers, licensing and compliance fees), economic externalities, or social impacts of legalization.

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Production costs for the legal market are expected to decline, creating space for government to collect a portion of the cost savings without increasing the legal retail price. Further, a potential consumer shift to more value-added cannabis products could create a larger tax base. Finally, as the legal market becomes more entrenched, more Canadians may opt into the legal market, resulting in higher revenues.

Total tax revenues will depend on total cannabis consumption and average retail prices. They will also depend on the level of taxation applied to cannabis products as well as the relative market shares among the recreational, medical and illicit markets.

As is the case with alcohol, tobacco and other demerit goods, the federal government may apply an excise tax in order to tax legal cannabis sales. There are multiple ways to do so. First, the tax may be levied at various stages of the production process, *i.e.*, cultivation or distribution, or at the point of sale. An excise tax may also be levied on different bases, *e.g.* by weight, THC potency or by price. Different products, such as edibles and concentrates, may require entirely different approaches to taxation.

Price Sensitivity

When legalization occurs, the PBO suggests that government may have little fiscal space to apply tax without pushing the price of legal cannabis significantly above the illegal market price. Even with only a sales tax, legal cannabis prices in 2018 will likely be as high as illicit market prices in 2015-16. Excise taxes will likely push the legal price above the illicit price observed in 2015-16. Any excise or sales tax will only apply to legal cannabis, making it less competitive than illicit cannabis. Higher tax levels and, by extension, legal cannabis prices could act as a disincentive for current users to transfer to the legal market.

According to the PBO, unless the average legal price is less than or equal to the illicit price, the illicit market will likely capture at least part of the total market. When the average legal price is less than or equal to the average illicit price, almost all consumption (98 per cent) is projected to shift to the legal market in 2018. However, as the legal price increases above that of the illicit price, the market share of legal cannabis progressively decreases. One, two and three dollar legal price premiums per gram are estimated to result in declining legal market shares of about 65, 56, and 42 per cent respectively.

The PBO states that tax policy decisions will therefore involve trade-offs between two of the federal government's goals: discouraging consumption among young Canadians and reducing the profits in the illicit cannabis market. While higher cannabis prices discourage consumption, especially among young Canadians who are likely to be more sensitive to price, higher legal cannabis prices provide a disincentive for current users to transfer to the legal market.

Finally, the report suggests orders of magnitude around important cannabis parameters and a framework to consider the economic and fiscal aspects of cannabis legalization.

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Public Law Sector
284 rue Wellington St., 3199
Ottawa, Ontario
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MEMORANDUM / NOTE DE SERVICE

s.23

Security classification – Côte de sécurité Protected
File number – Numéro de dossier 9-
Date November 22, 2016
Telephone / FAX – Téléphone / Télécopieur 957-4684 / 941-1937

TO / DEST: Laurie Wright, Assistant Deputy Minister
Public Law and Legislative Services Sector

FROM / ORIG: Luanne A. Walton, General Counsel
Constitutional, Administrative and International Law Section

SUBJECT / OBJET: 

Comments/Remarques



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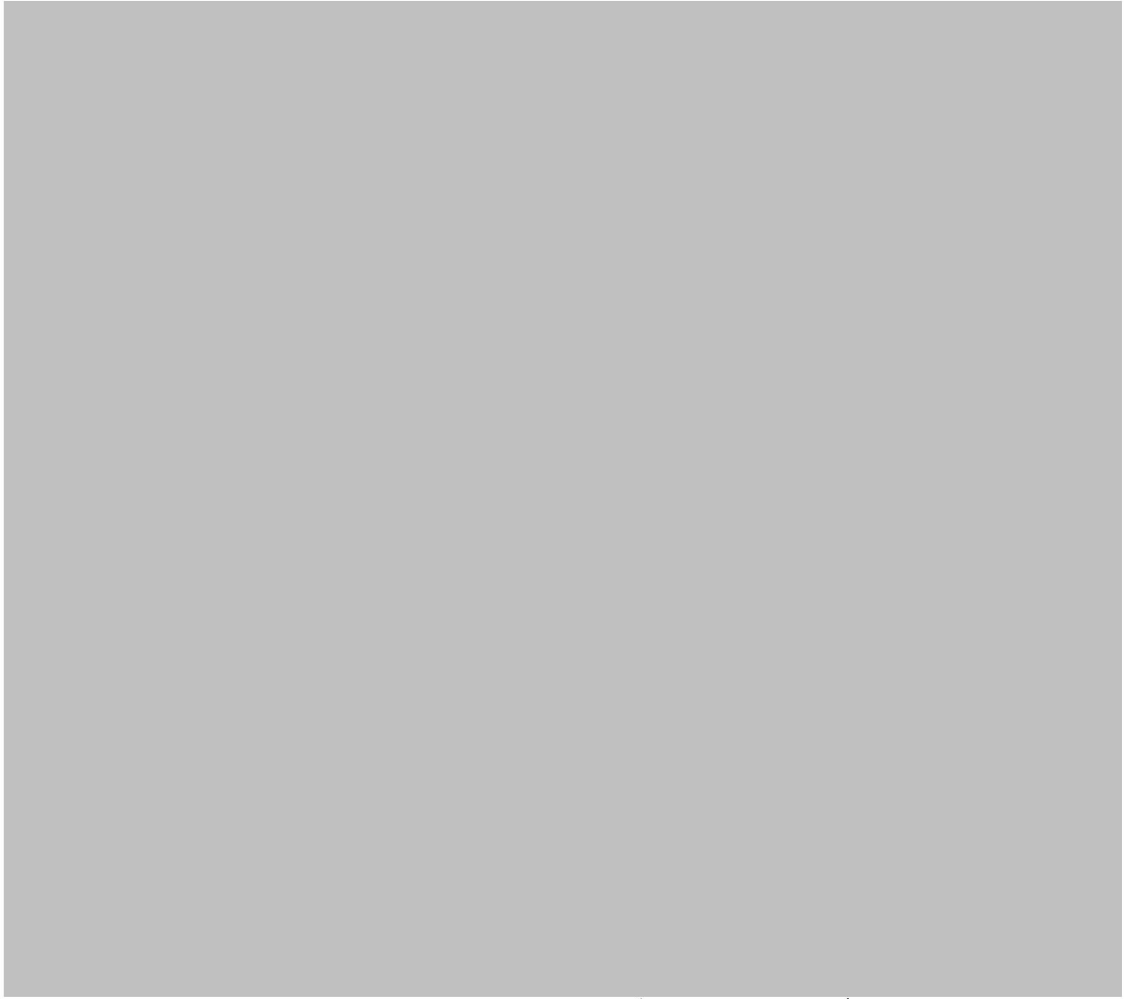
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A handwritten signature in dark ink, appearing to be 'L. A. W.'.

L. A. W.

cc. Edward Livingstone

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Morasse, Eveline (PS/SP)

From: Labelle2, Diane (HC/SC)
Sent: Tuesday, December 13, 2016 4:35 PM
To: Pahwa, Sheena; Saint-Denis, Paul; Wells, Joanna; Yost, Greg; Pruden, Hal; Walton, Luanne; 'Moore, Dan'; Piekarczyewski, Anna (PS/SP)
Cc: Won, Norma (HC/SC); Goldstone, Jennifer; Kealey, Joel; Morales, John (HC/SC); Wong, Leanne
Subject: RE: Finals | Mariiua Task Force
Attachments: [REDACTED]

s.69(1)(g) re (e)

Hi Sheena,

Thanks
Diane

Diane Labelle

General Counsel, Legal Services
Health Canada / Government of Canada
diane.labelle2@canada.ca / Tel: 613-948-7453

Avocate générale, Services juridiques
Santé Canada / Gouvernement du Canada
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From: Pahwa, Sheena [<mailto:Sheena.Pahwa@justice.gc.ca>]
Sent: 2016-12-13 2:14 PM
To: Labelle2, Diane (HC/SC); Saint-Denis, Paul; Wells, Joanna; Yost, Greg; Pruden, Hal
Cc: Won, Norma (HC/SC); Goldstone, Jennifer; Kealey, Joel; Morales, John (HC/SC)
Subject: RE: Finals | Marijuana Task Force

Hello,

Joanna/Hal/Greg – [REDACTED]

Thanks in advance,
Sheena Pahwa

From: Goldstone, Jennifer
Sent: December 13, 2016 11:36 AM
To: 'Labelle2, Diane (HC/SC)' <diane.labelle2@canada.ca>; Saint-Denis, Paul <Paul.Saint-Denis@justice.gc.ca>; Won, Norma (HC/SC) <norma.won@canada.ca>
Cc: Pahwa, Sheena <Sheena.Pahwa@justice.gc.ca>
Subject: RE: Finals | Marijuana Task Force

Hi Diane.

Thanks.

Jennifer
613-790-6793

s.69(1)(g) re (e)

From: Labelle2, Diane (HC/SC) [mailto:diane.labelle2@canada.ca]

Sent: December-13-16 11:33 AM

To: Goldstone, Jennifer <Jennifer.Goldstone@justice.gc.ca>; Saint-Denis, Paul <Paul.Saint-Denis@justice.gc.ca>; Won, Norma (HC/SC) <norma.won@canada.ca>

Subject: Re: Finals | Marijuana Task Force

Thanks Jennifer.

Thanks
Diane

Envoyé de mon smartphone BlackBerry 10 sur le réseau Rogers.

De: Goldstone, Jennifer

Envoyé: mardi 13 décembre 2016 11:29 AM

À: Saint-Denis, Paul; Won, Norma (HC/SC); Labelle2, Diane (HC/SC)

Objet: FW: Finals | Marijuana Task Force

From: Collin, Pierre

Sent: December-13-16 11:21 AM

To: Goldstone, Jennifer <Jennifer.Goldstone@justice.gc.ca>; Kealey, Joel <Joel.Kealey@justice.gc.ca>; Kingston, Paula <Paula.Kingston@justice.gc.ca>

Subject: RE: Finals | Marijuana Task Force

Report is live.

Here is the link: http://healthykanadians.gc.ca/task-force-marijuana-groupe-etude/framework-cadre/index-eng.php?utm_source=news.gc&utm_medium=related_products_link_en&utm_campaign=mj_task_force_16&ga=1.189452203.16078032.1481645998

From: Collin, Pierre

Sent: December-13-16 9:52 AM

To: Kealey, Joel <Joel.Kealey@justice.gc.ca>; Goldstone, Jennifer <Jennifer.Goldstone@justice.gc.ca>; Filion, Marie-Claude <Marie-Claude.Filion@justice.gc.ca>; Rudick, Catherine <Catherine.Rudick@justice.gc.ca>; Morency, Carole <Carole.Morency@justice.gc.ca>; Kingston, Paula <Paula.Kingston@justice.gc.ca>; Saint-Denis, Paul <Paul.Saint-Denis@justice.gc.ca>

Subject: FW: Finals | Marijuana Task Force

Hi everyone,

Pierre

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s.69(1)(g) re (e)

Morasse, Eveline (PS/SP)

From: Morales, John (HC/SC)
Sent: Thursday, January 05, 2017 4:06 PM
To: Goldstone, Jennifer; 'Kealey, Joel'
Cc: Saint-Denis, Paul; 'Moore, Dan'; 'Walton, Luanne'; Won, Norma (HC/SC); Labelle2, Diane (HC/SC); Trepanier, Chantal (HC/SC); Piekarczywski, Anna (PS/SP)
Subject: FW: [REDACTED]
Attachments: [REDACTED]

Hello Jennifer and Joel,

[REDACTED]

Thank you to everyone for your collaboration under the short timelines.

John Morales
A/Senior Counsel | Avocat-conseil p.i.
Health Canada | Santé Canada
Tel: | Tél: 613-941-8166

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From: Costen, Eric (HC/SC)
Sent: 2017-01-04 3:42 PM
To: carole.morency@justice.gc.ca; Bhupsingh, Trevor (PS/SP); Holmes, Michael (PS/SP); daniele.menard@justice.gc.ca; Couturier, Renee (HC/SC); Labelle2, Diane (HC/SC)
Cc: jennifer.goldstone@justice.gc.ca; paul.saint-denis@justice.gc.ca; Huggins, Rachel (PS/SP); Ramphal, Melissa (HC/SC); Won, Norma (HC/SC); Budnell, Andrea (HC/SC); Clare, John (HC/SC); Smith2, Laura (HC/SC); Kitchen, George (HC/SC)
Subject: [REDACTED]

Hi there,



Eric

s.69(1)(g) re (d)

s.69(1)(g) re (e)

Director General / Directeur Général

Cannabis Legalization and Regulation Secretariat / Secrétariat de la légalisation et de la réglementation du cannabis

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eric.costen@canada.ca

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Page 405

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